

**LOWER PROVIDENCE TOWNSHIP**  
**Montgomery County, Pennsylvania**

**ORDINANCE NO. 639**

**AN ORDINANCE OF LOWER PROVIDENCE TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA, ESTABLISHING ARTICLE XXXIV, RIPARIAN BUFFER OVERLAY ZONE, IN ORDER TO PROTECT STREAMBANKS, FISH AND ANIMAL HABITATS, REDUCE THE INTRODUCTION OF HARMFUL SUBSTANCES INTO WATERCOURSES, AND TO CONSERVE EXISTING NATURAL FEATURES IMPORTANT TO LAND OR WATER RESOURCES ON DEVELOPED AND UNDEVELOPED LAND.**

**WHEREAS**, The Township of Lower Providence (“Township”) is empowered to ensure the public safety, welfare, and health pursuant to the Second Class Township Code, 53 P.S. §65101 *et seq.*; and

**WHEREAS**, the Township is also empowered to enact zoning ordinance provisions to regulate the use of land, watercourses, and other bodies of water and to protect and preserve natural and historic resources pursuant to Section 603(b)(1) and (5) of the Pennsylvania Municipalities Planning Code (“MPC”) (53 P.S. §10603(b)(1) and (5)); and

**WHEREAS**, MPC Section 603(c)(2) (53 P.S. §10603(c)(2)) further provides for the establishment of conditional uses to be allowed or denied by the governing body pursuant to express standards and criteria as set forth in the Zoning Ordinance; and

**WHEREAS**, MPC Section 603(g)(2) (53 P.S. §10603(g)(2)) mandates that zoning ordinances shall provide for protection of natural and historic features and resources; and

**WHEREAS**, MPC Section 604(1) (53 P.S. §10604(1)) requires that zoning ordinances be designed to promote, protect, and facilitate the natural, scenic, and historic values in the environment, as well as, the preservation of forest, wetland, aquifers, and floodplains; and

**WHEREAS**, Chapter 4 of the Township’s Comprehensive Plan sets forth the positive impacts of a protected stream corridor, including, but not limited to, carrying floodwaters, minimizing erosion and water pollution, protecting water quality (temperature and velocity), and providing animal habitat and recreation opportunities; and

**WHEREAS**, Chapter 4 of the Comprehensive Plan also notes that well-vegetated corridors greatly reduce pollutant loads to streams, shade the stream, and provide habitat for wildlife; and

**WHEREAS**, the Township contains numerous waterways designated as TSF Trout Stocking Fishes, which is the second highest designation of water quality; and

**WHEREAS**, the higher the designation of a waterway, the higher that waterway's value is for the protection and propagation of aquatic life; and

**WHEREAS**, Chapter 4 of the Comprehensive Plan also notes that woodlands serve many functional and aesthetic purposes, including the prevention of erosion, provision of habitat for wildlife, production of oxygen, provision buffers for waterways, reduction of ground surface temperatures, and provision of recreational opportunities for residents; and

**WHEREAS**, much of the undisturbed woodlands within the Township are along the Perkiomen Creek and Schuylkill River, since these areas were never developed or farmed because of the presence of the floodplain; and

**WHEREAS**, Chapters 6, 9, and 12 of the Comprehensive Plan recommend that the Township enact zoning amendments to protect environmental resources, such as floodplains, wetlands, riparian buffers, and woodlands; and

**WHEREAS**, the Township has adopted tree protection standards as a part of its Subdivision and Land Development Ordinance; and

**WHEREAS**, Chapter 6 of the Comprehensive Plan specifically states as a "Goal", the promotion of the preservation and enhancement of significant natural features and cultural resources that defines and distinguishes the Township's unique environment and history; and

**WHEREAS**, Chapter 6 of the Comprehensive Plan specifically lists the enactment of a riparian buffer amendment to the Zoning Ordinance for stream corridor and wetland preservation as a specific "Objective"; and

**WHEREAS**, Chapters 9 and 12 of the Comprehensive Plan specifically recommend that such a riparian buffer amendment establish setbacks from stream corridors and wetlands to promote surface water quality and protect important aquifer recharge areas; and

**WHEREAS**, the adoption of such a riparian buffer amendment was also recommended for adoption in the Township's 1995 Open Space Plan.

**NOW, THEREFORE**, after review and recommendation by the Montgomery County Planning Commission and the Lower Providence Township Planning Commission, it hereby be **ENACTED** and **ORDAINED** by the Board of Supervisors of Lower Providence Township, Montgomery County, Pennsylvania, as follows:

## **ARTICLE I      RIPARIAN BUFFER OVERLAY**

The Lower Providence Township Zoning Ordinance, Chapter 143 of the Code of Ordinances of the Township of Lower Providence is hereby revised and amended by adding a new Article XXXIV that shall read as follows:

### **Article XXXIV Riparian Buffer Overlay Zone**

#### **§ 143-265. Creation and purposes of riparian buffers.**

A Riparian Buffer Overlay Zone (RBOZ) shall be and hereby is created in order to protect and preserve the numerous benefits that are provided by riparian buffers, including the following:

- A. Reduction of the amount of nutrients, sediment, organic matter, pesticides, and other harmful substances that reach watercourses through subsurface and surface flow pathways through natural processes including filtration, deposition, absorption, adsorption, plant uptake, and denitrification, and by improving infiltration, sheet flow, and stabilizing concentrated flows;
- B. The consumption of nitrogen and denitrification in surface and groundwater and the trapping of phosphorus-laden sediment and other pollutants resulting from adjacent land uses, which are critical to the protection of water quality;
- C. Provision of shade which moderates stream temperature and protects fish habitats by retaining more dissolved oxygen and encouraging the growth of diatoms, beneficial algae, and aquatic insects;
- D. Provision for stream bank stability that protects fish habitats and controls sediment and erosion (tree roots consolidate the soils of floodplains and stream banks, reducing the potential for severe bank erosion);
- E. Provision of organic matter through leaves which fall into the stream and are trapped on woody debris (fallen trees and limbs) and rocks where they provide food and habitats for small bottom dwelling creatures (such as insects, amphibians, crustaceans and small fish), which are critical to the aquatic food chain;
- F. Conservation of natural features important to land or water resources (e.g. headwater areas, groundwater recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and prime wildlife habitats) that exist on developed and undeveloped land;
- G. Improvement and maintenance of the safety, reliability, and adequacy of the water supply for domestic, agricultural, commercial, industrial, and recreational uses along with sustaining diverse populations of aquatic flora and fauna;

- H. Conservation of natural, scenic, and recreation areas within and adjacent to riparian areas for the community's benefit and protection of natural features that provide recreational value, contain natural amenities, or otherwise contribute to the welfare and quality of life of Township residents;
- I. Prevention of erosion and sedimentation and implementation of erosion and sediment control practices as mandated under the Pennsylvania Clean Streams Law, Act 394, P.L. 1987; and
- J. Integration with floodplain, steep slope, and other requirements that regulate environmentally sensitive areas to minimize hazards to life, property, and riparian features.

#### **§ 143-266 Definitions.**

When used in this Article the following terms shall have the meanings set forth below:

- A. The term "stream channel" shall mean the bed and banks of a watercourse or Waters of the Commonwealth. For purposes of this Article, stream channel shall include perennial and intermittent watercourses and/or stream channels as defined by PA DEP and/or identified on current USGS maps and NRCS soils maps of the Township, but shall not include ephemeral watercourses as defined by PA DEP.
  - (1) The Township or the applicant may obtain a consultant to verify the delineation of a stream channel if, in the opinion of the Township or applicant, the stream channel information contained on the above-referenced mapping is believed to be inaccurate. The study from the consultant shall evaluate the hydrologic conditions during average springtime non-drought conditions. Additional information may include other mapping produced by state or federal agencies and an Army Corps of Engineers Jurisdictional Determination. The Lower Providence Township Board of Supervisors shall make the final decision regarding the delineation of a stream channel based on the submitted information. The Township may reduce or eliminate the riparian buffer zone where the Township concurs that the watercourse classification is not accurate or existing conditions and/or topography of the site do not warrant a full riparian buffer.
- B. The term "land disturbance" shall mean any activity that exposes soil, alters topography, alters the existing structure of a woodland or hedgerow and/or removes vegetation. Alteration includes the cutting or removal of trees, understory shrubs and vines, woody and herbaceous woodland floor species, as well as, the removal of humus or duff from the ground. The term "land disturbance" shall not include the mowing and routine maintenance of existing lawn, native plantings, or any lawn area that may be permitted within the RBOZ after the \_\_\_\_\_ [Effective Date of this Ordinance].

- C. The term “perennial stream” shall mean any and all streams identified as perennial in the most recent Soil Survey of Montgomery County.
- D. The term “intermittent stream” shall mean a body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of a non-drought year, is below the natural local water table and obtains its flow from both surface runoff and ground water discharges.

**§ 143-267. Relationship to other zoning regulations.**

The RBOZ is an overlay to the existing zoning districts within the Township. The provisions of the underlying district shall remain in full force, except where the provisions of the RBOZ differ from the provisions of the underlying district, in which case the provision which is more restrictive and less permissive shall apply. The RBOZ will work with the provisions of the underlying district, as well as other natural resource protection standards, to regulate land use and the siting and engineering of all development within the Township to ensure natural resources are preserved and protected.

**§ 143-268. Establishment.**

- A. The RBOZ shall include and cover the following watercourses and other bodies of water:

Schuylkill River and tributaries

Perkiomen Creek and tributaries

Skipack Creek and tributaries

Stony Creek and tributaries

Indian Creek and tributaries

Eagleville Run and tributaries

French Run and tributaries

Miller Run and tributaries

Mine Run and tributaries

Rock Run and tributaries

Schatz Run and tributaries

All other perennial and intermittent streams

Lakes and ponds

Wetlands

Any other body of water identified by Resolution of the Lower Providence Township Board of Supervisors as being included within the RBOZ

B. The width of the RBOZ shall be and is hereby established as follows:

- (1) Zone One: This zone will begin at each edge of a stream channel/waterline/wetland edge (whichever is applicable) and occupy a minimum width of 30 feet measured horizontally on a line perpendicular to the top of the bank/edge of waterline or wetland. Where the land within 30 feet of the defined edge of a stream channel has an upland slope greater than 10%, Zone One shall include the land from the stream channel edge and the upland slope and shall further extend outward 30 feet from the edge or top of such upland slope; and
- (2) Zone Two: This zone will begin at the outer edge of Zone One and occupy a minimum width of 60 feet in addition to Zone One, unless modified herein. Where the 100-year floodplain extends greater than 90 feet from the waterway, Zone One shall remain a minimum of 30 feet, and Zone Two shall extend from the outer edge of Zone One to the outer edge of the 100-year floodplain.

C. The applicant shall be responsible for the following:

- (1) Identifying the watercourses and other bodies of water on and abutting the applicant's site, and locating these features accurately on the applicant's plans.
- (2) Determining the width of the RBOZ on the site in compliance with this Section and identifying this area on any plan that is submitted for subdivision, land development, or other improvements that require plan submissions to and/or permits from the Township. This determination shall be subject to review and approval by the Township.

**§ 143-269. Activities and uses permitted in the RBOZ.**

- A. No structure, land disturbance, or use shall be permitted within the RBOZ unless permitted herein as of right, or by zoning permit, or specifically authorized by conditional use as provided herein. Notwithstanding the foregoing, in no event shall any of the following activities or uses be permitted within the RBOZ: (a) any solid or hazardous waste facilities, including but not limited to sanitary landfills, transfer stations or wastewater lagoons; (b) junkyards, commercial or industrial storage facilities, or open storage of vehicles and materials.
- B. The allowance of any activity, structure or other use under this Section, whether by right, permit, conditional use, or otherwise, shall not constitute a waiver of the requirements of any other applicable federal, state, or local laws or regulations.
- C. In Zone One, the following uses shall be permitted as of right:



- (1) Pruning and removal of trees and other vegetation which are dead, diseased, or in such a condition or physical position as to constitute (a) a danger to the structures or occupants of property or a public right-of-way, or (b) a threat to the well-being of other viable trees and shrubs or the stream channel, provided that any such activities are performed by hand or with the aid only of tools or power equipment which are hand-held and provided the removed vegetation is replaced in accordance with the applicable provisions of this Article;
- (2) Unpaved hiking, biking, or bridle trails (paved hiking, biking, or bridle trails are only permitted when their location outside of Zone One is not feasible and only upon approval of the Township of Lower Providence);
- (3) Fishing areas, provided, however, that the area provided for any such use on a lot shall not exceed 20% of the area of the RBOZ on that lot;
- (4) Wildlife sanctuaries, arboretums, woodland, and other natural resource preserves, but excluding buildings;
- (5) Selective cutting of trees and/or the clearing of other vegetation when necessary to prepare land for a use permitted by the underlying zoning district and within the RBOZ, provided the removed vegetation is replaced in accordance with the applicable provisions of this Article;
- (6) Existing customary agricultural uses in accordance with a soil conservation plan approved by Montgomery County Conservation District (new agricultural uses, not existing at the time this Ordinance is adopted, shall not be permitted);
- (7) Routine maintenance and cleaning of streams and stream channels pursuant to all applicable federal, state, and county laws and regulations; and
- (8) Dredging or grading, when incidental to uses permitted within the RBOZ.

D. The following uses shall only be permitted in Zone One as a conditional use when authorized by the Board of Supervisors of Lower Providence Township, subject to requirements for conditional uses as set forth in this Chapter and this Article, as well as, Section 143-80 of this Chapter:

- (1) Culverts, corridor crossings for recreational trails, railroads, roads, and the facilities of all utilities, including sanitary and storm sewers and electric and cable transmission lines, provided that they cross the stream corridor as directly as practical, comply with all applicable federal, state, county, and Township laws or regulations, and provided that any disturbances are offset by riparian corridor improvements that are approved by the Township.

E. In Zone Two, the following uses shall be permitted as of right:

- (1) All uses permitted as of right in Zone One; and
  - (2) Reconstruction of a nonconforming building or structure may occur in accordance with Article XX of this Chapter, Nonconforming Uses, and any other applicable provisions of this Chapter regarding nonconforming buildings and/or structures.
- F. The following uses shall only be permitted in Zone Two as a conditional use when authorized by the Board of Supervisors, subject to requirements for conditional uses in this Chapter and this Article, as well as, Section 143-80 of this Chapter:
- (1) Residential Accessory Structures and Uses including the foregoing uses shall be permitted within the Riparian Buffer Zone but not within 30 feet of the edge of any stream channel or waterbody; and
  - (2) Recreational Uses, including, but not limited to paved trails, sport and ball fields and courts, public and private parklands, camps, campgrounds, picnic areas, golf courses, and playgrounds, provided that no permitted structure has a footprint of greater than 200 square feet and provided these uses are designed in a manner that will not permit concentrated flow of stormwater runoff.
- G. The following uses shall only be permitted in Zone Two as a conditional use when authorized by the governing body of the municipality in which the use will be located, subject to requirements for conditional uses as set forth in this Chapter and this Article, as well as, Section 143-80 of this Chapter:
- (1) In channel dams where approvals and/or permits are received from PA DEP;
  - (2) Culverts, bridges roads, and the facilities of all utilities, including sanitary and storm sewers and electric and cable transmission lines, provided that they cross the stream corridor as directly as practical, comply with all applicable federal, state, county, and local laws or regulations, and any disturbances offset by riparian corridor improvements approved by the Township; and
  - (3) Stormwater management basins in accordance with the Code of Ordinances of Lower Providence Township, provided the applicant demonstrates that no other reasonable alternative location exists and provided these basins are designed in a manner that will not permit concentrated flow of stormwater runoff.

#### **§143-270. Requirements and standards for all conditional uses.**

Within the RBOZ, conditional uses are permitted provided the landowner or applicant shows:

- A. That there is insufficient room outside the RBOZ to accommodate the particular use or accessory use; and



- B. That there is no other feasible alternative to establishment of the use in the RBOZ; and
- C. That if the proposed use is an expansion or replacement of an existing use, that the expansion or replacement occur in the same footprint of the exiting use, unless an increase in size is authorized by the Board of Supervisors during the Conditional Use hearing; and
- D. That if the proposed use is a replacement or re-location of an existing use located within or outside the Township boundaries, the applicant shall prove: 1) that reusing or replacing the existing use in its current location, is not environmentally nor economically feasible; and 2) that the relocation of the existing use will have less impact on the existing environmental and historic resources of the proposed location in the RBOZ than reusing or replacing this use at its existing location; and
- E. That any re-location of an existing use located within or outside of the Township have less impact on Township residents than replacement of that use in the existing location; and
- F. That no Heritage Trees as defined in Section 123-144 of the Lower Providence Subdivision and Land development Ordinance (SLDO) shall be removed unless approved by the Board of Supervisors during the Conditional Use hearing and only upon compliance with Section 123-146 of the SLDO.
- G. That when the applicant is proposing a corridor crossing, the application shall incorporate, as required, the following design standards.
  - (1) The width of the right-of way should not be greater than the minimum right-of-way width required by Chapter 123 of the Code of Ordinances (SLDO).
  - (2) Crossings should be designed to cross the riparian corridor at direct right angles to the greatest extent possible, in order to minimize disturbance of the corridor.
  - (3) Corridor crossings should be separated by a minimum of 1,000 feet of buffer length.
  - (4) Bridges shall be used in place of culverts when crossings would require a 72-inch or greater diameter pipe. When culverts are installed they should consist of slab, arch, or box culverts and not corrugated metal pipe. Culverts should also be designed to retain the natural channel bottom to ensure the passage of water during low flow or dry weather periods.

**§ 143-271. Restoration and revegetation of riparian buffers.**

The requirements of this Section shall apply to those all uses in the RBOZ whether permitted by right or by conditional use, and in cases where a subdivision or land development is proposed.

Native vegetation approved by the Township must be used in replanting efforts. Three (3) layers of vegetation are required when replanting the riparian corridor. These three (3) layers include herbaceous plants that serve as ground cover, understory shrubs, and trees that form an overhead canopy. The revegetation plan shall be prepared by a qualified licensed professional, such as a landscape architect or engineer; shall comply with the following minimum requirements; and shall be subject to the approval of the Township Engineer:

- A. Ground Cover. Ground cover consisting of a native seed mix extending a minimum of 30 feet in width from the edge of the stream bank or waterline, whichever is wider, must be provided along the portion(s) of the RBOZ where little or no riparian vegetation exists or where such vegetation has been removed. Appropriate ground cover includes native herbs and forbs exclusive of noxious weeds as defined by the Pennsylvania State Department of Agriculture. This 30 foot wide planted area shall be designated on the plan as a “no mow zone” and shall be left as natural cover except in accordance with the maintenance instructions stated on a Township-approved maintenance plan; and
- B. Trees and Shrubs. These planting layers include trees that form an overhead canopy and understory shrubs. Trees and shrubs must be provided along the portion(s) of the RBOZ where little or no such riparian vegetation exists or where this type of vegetation has been removed. Overstory trees are deciduous or evergreen trees that include oak, hickory, maple gum, beech, sycamore, hemlock, pine and fir. Evergreen and deciduous shrubs should consist of elderberry, viburnum, azalea, rhododendron, holly, laurel and alders. These plants shall be planted in an informal manner throughout Zone 1 and Zone 2 of the RBOZ. These plants shall be provided at a rate of at least one (1) overstory tree and three (3) shrubs for every 20 linear feet of waterway/shoreline. The replacement of removed trees shall comply with the tree replacement provisions set forth in Article XXIII, Natural Resources Protection, of Chapter 123 of the Code of Ordinances.

#### **§143-272. Mitigation Measures**

Uses permitted in the RBOZ involving structural encroachments into the RBOZ, such as corridor crossings, stormwater basins, buildings, and paved trails, shall be mitigated by increasing the width of the RBOZ as replacement for the area lost due to the encroachment. The amount of this mitigation land to be added to the RBOZ shall be equal to two (2) times the area of the encroachment and any appurtenant improvements located within the RBOZ. This mitigation land shall be added to the width of the RBOZ in the areas closest to the encroachment to best mitigate the negative impacts of the encroachment and shall have a minimum dimension of five (5) feet deep and ten (10) feet long. This mitigation land must be located upon the property of the applicant/developer, and property owned/controlled by third parties cannot be used to meet this mitigation requirement. The placement and dimensions of this mitigation land shall be reviewed and approved by the Township to ensure that it is located and designed to best alleviate any negative effects of the encroachment.

### **§143-273. Ephemeral watercourses**

Ephemeral watercourses shall be protected from disturbance by the establishment of a 30 foot wide drainage easement centered along the watercourse in a form acceptable to the Township of Lower Providence.

### **ARTICLE II REPEALER**

All other Township ordinances or parts of ordinances which are inconsistent herewith are hereby repealed but only to the extent of such conflict.

### **ARTICLE III SEVERABILITY**

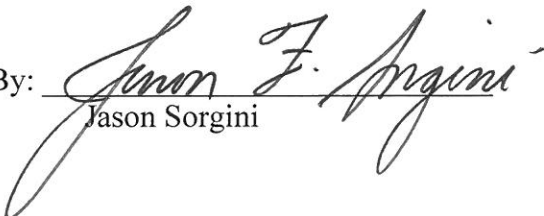
If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

### **ARTICLE IV EFFECTIVE DATE**

This Ordinance shall become effective five (5) days after final enactment.

**ENACTED AND ORDAINED** this 19<sup>th</sup> day of May, A.D., 2016.

**LOWER PROVIDENCE TOWNSHIP  
BOARD OF SUPERVISORS**

By:   
Jason Sorgini

Attest: 